

***United States Court of Appeals
for the Second Circuit***



APPENDIX

Original - Affid. of Mailing

74-1304

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-1304

UNITED STATES OF AMERICA,

Appellee,

—against—

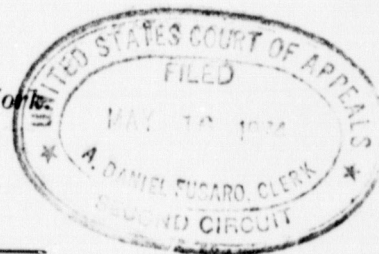
ROBERT J. CARROLL and DOROTHY CARROLL,

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX

EDWARD JOHN BOYD V,
United States Attorney,
Eastern District of New York



PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

	Page
Docket Sheets in 65-C-354 (E.D.N.Y.)	A-1
Summons	
(dated March 31, 1965)	A-4
Complaint	A-6
Answer	A-11
Note of Issue	
(dated December 14, 1965)	A-16
Statement of Readiness	
(dated December 14, 1965)	A-18
Judgment by Consent	
(dated December 21, 1967)	A-19
Order to Show Cause and Affidavit	
with Exhibits (dated November 5, 1973)	A-21
Affidavit of I. Bradford Spielman	
with Exhibits (dated November 16, 1973)	A-33
Reply Affidavit of Robert J. Carroll	
(dated November 26, 1973)	A-38
Memorandum and Order of the District	
Court (dated January 3, 1974)	A-41
Docket Sheets in 64-C-287 (E.D.N.Y.)	A-44
Memorandum and Order of the District	
(Court (Dooling, J.) in 64-C-287	
(E.D.N.Y.)	A-46

65C 354

UNITED STATES OF AMERICA vs. ROBERT J. CARROLL

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
3-11-65	Complaint filed. Summons issued.	1
5-5-65	Summons returned and filed. Defts served on 5/1/65	2
5-19-65	By DOOLING, J.- Order filed extending time for defts to answer complaint to July 19, 1965. (1) (P/C mailed to attys)	3
10-22-65	Pltff's interrogatories to deft Robert J. Carroll filed.	4
12-2-65	Pltff's notice to take the deposition of Pltffs on 12/2/65 filed	5
12-8-65	Defts' notice to take the deposition of Pltff by Hyman Dolger on Dec 17, 1965 filed.	6
12-10-65	ANSWER of defendants filed. (Affid of srv by mail on 7/16/65)	7
12-10-65	Dft Robert J. Carroll's answers to Pltff's interrogatories filed.	8
12-14-65	NOTE OF ISSUE AND STATEMENT OF READINESS FILED.	9
12-20-67	Before ZAVATT, CH. J.- Case called - Marked Ready Dec 4, 1967 and assigned to Judge Rosling for Trial.	
12-2-67	Before ROSLING, J.- Case called returned to Judge Zavatt, Ch.J. no prospect of early readiness.	
12-5-67	Before ZAVATT, CH. J.- Case ordered ready for trial or assignment on 12/11/67 before Zavatt, Ch. J.	
12-11-67	Before ZAVATT, CH. J.- Case called - Marked Ready.	
12-12-67	Telegram to Judge Zavatt, Ch. from Robert J. Carroll filed.	10
12-12-67	Before ZAVATT, CH. J.- Case called - TRIAL ORDERED & BEGUN Trial continued to Dec 20, 1967, at 10:30 A.M.	
12-20-67	Before ZAVATT, CH. J.- Case called - Trial resumed - Trial continued to 12/21/67 at 10:30 A.M.	
12-21-67	Before ZAVATT, CH. J.- Case called - Trial resumed - Trial adjd to Dec 26, 1967, 10:00 A.M.	
12-21-67	By ZAVATT, CH. J.- JUDGMENT BY CONSENT FILED. It is ordered that pltff recover from defts \$23,965.36, plus interest. and that pltff recover costs as taxed by the Clerk. (P/C mailed to attys) (J/C)	11
1-7-73	By COSENTINO, J. - Order to show cause dtd 11-7-73 for an order vacating judgment entered 12-21-67, without proof of service filed.	12

A 3

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN ENCLOSURE RETURN
		PLAINTIFF	DEFENDANT	
1-1-73	Before COSTANTINO, J. - Case called for hearing on order to show cause to vacate judgment. Motion argued. Decision reserved.			
1-1-73	Affidavit of Bradford Spielman filed.			13
1-3-74	By COSTANTINO, J. - Order dtd. 1-3-74 denying deft's motion to vacate & set aside the consent decrees filed. (p/c mailed to atty) 14			
1-30-74	Notice of appeal filed. Duplicate mailed to C of A & plttf. jn			15
2-6-74	Affidavit of Robert J. Carroll in answer to govt's affidavit of 11-16-73 filed.			16
3-5-74	Record on appeal certified and mailed to C of A.			
3/7/74	Adknwledgment recd and filed from the C. of A. for receipt of Index to Record on Appeal .			17

SUMMONS (Dated March 31, 1965)

A

4

SUMMONS IN A CIVIL ACTION

D. C. Form No. 40a Rev. 10-64

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

650 354

CIVIL ACTION FILE NO.

UNITED STATES OF AMERICA

Plaintiff

v.

ROBERT J. CARROLL and
DOROTHY CARROLL

Defendants

SUMMONS

Address of Defendants:

3111 Avenue C
Brooklyn, New York

ONLY COPY AVAILABLE

To the above named Defendant :

You are hereby summoned and required to serve upon **JOSEPH P. HOEY, United States Attorney for the Eastern District of New York,**

qst. of

19

plaintiff's attorney, whose address is 225 Washington Street, Brooklyn, New York

200/100

B2

DEBORA LORETTA BROWN

LETTER

2

an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

SIDNEY R. BEYER

Clerk of Court

Henry D. Brown

Deputy Clerk

Date: Brooklyn, New York,

[Seal of Court]

March 3, 1965.

[Note: This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.]

U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

COMPLAINT

A 6

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA, :

Plaintiff :

v. :

CIVIL ACTION NO.

ROBERT J. CARROLL and DOROTHY
CARROLL, :

Defendants :

COMPLAINT

----- x

For its complaint against the above-named defendants, the plaintiff, United States of America, by its attorney, Joseph P. Hey, United States Attorney for the Eastern District of New York, alleges as follows:

I

This is a civil action to reduce to judgment assessments for certain income taxes, fraud penalties, and interest as provided by law against the defendants, Robert J. Carroll and Dorothy Carroll made by the plaintiff, United States of America.

II

This action has been authorized and requested by the Commissioner of Internal Revenue, a delegate of the Secretary of the Treasury of the United States, and is brought under the direction of the Attorney General of the United States pursuant to the provisions of Section 7401 of the Internal Revenue Code of 1954.

III

Jurisdiction of this action is conferred on this Court by Sections 1340 and 1345 of Title 28, United States Code, and Section 7402 of the Internal Revenue Code of 1954, for the reason that this is a civil action arising under the Internal Revenue laws of the United States, wherein the United States seeks to recover a judgment for alleged tax liabilities.

IV

That at all times mentioned herein, the plaintiff has been and now is a sovereign corporation and a body politic.

V

That on information and belief defendant, Robert J. Carroll, resides within the jurisdiction of this Court.

VI

That on information and belief the defendant, Dorothy Carroll, resides within the jurisdiction of this Court.

VII

That on October 15, 1957, a delegate of the Secretary of the Treasury made an assessment for income taxes for the year 1949 in the amount of \$3,354.12, plus interest in the amount of \$1,526.12 and a fraud penalty in the amount of \$2,341.06 against the defendants, Robert J. Carroll and Dorothy Carroll; and on October 15, 1957, a delegate of the Secretary of the Treasury gave the said defendants notice of the assessments described in this paragraph stating the amount and demanding payment thereof; but that the full amount of the said assessments has not been paid, credited, or abated, excepted for payments and credits in the amount of

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\$40.00; and that, therefore, there remains owing and unpaid to the United States of America a total tax liability in the amount of \$7,813.30, plus interest as provided by law.

VIII

That on June 12, 1959, a delegate of the Secretary of the Treasury made an assessment for income taxes for the year 1950 in the amount of \$2,563.72, plus interest in the amount of \$1,238.89 and a fraud penalty in the amount of \$1,809.72 against the defendants, Robert J. Carroll and Dorothy Carroll; and on June 12, 1959, a delegate of the Secretary of the Treasury gave the said defendants notice of the assessments described in this paragraph stating the amounts due and demanding payment thereof; but that the full amount of the said assessments has not been paid, credited, or abated, except for payments and credits in the amount of \$40.00; and that, therefore, there remains owing and unpaid to the United States of America a total tax liability in the amount of \$5,577.33.

IX

That on June 12, 1959, a delegate of the Secretary of the Treasury made an assessment for income taxes for the year 1951 in the amount of \$4,049.43, plus interest in the amount of \$1,710.10 and a fraud penalty of \$2,742.81 against the defendants, Robert J. Carroll and Dorothy Carroll; and on June 12, 1959, a delegate of the Secretary of the Treasury gave the said defendants notice of the assessments described in this paragraph stating the amounts due and demanding payment thereof; but that the full amount of the said assessments has not been paid, credited, or abated, except for payments and credits in the amount of \$18.34; and that, therefore, there remains owing and unpaid to the United States of America a total tax liability in the amount of \$3,484.15.

X

That on October 15, 1957, a delegate of the Secretary of the Treasury made an assessment for income taxes for the year 1952 in the amount of \$1,337.16, plus interest in the amount of \$381.47 and a fraud penalty in the amount of \$992.65 against the defendants, Robert J. Carroll and Dorothy Carroll; and on October 15, 1957, a delegate of the Secretary of the Treasury gave the said defendants notice of the assessments described in this paragraph stating the amounts due and demanding payment thereof but that the full amount of the said assessments has not been paid, credited, or abated, except for payments and credits in the amount of \$560.00; and that, therefore, there remains owing and unpaid to the United States of America a total tax liability in the amount of \$2,755.63.

XI

That the assessments described in paragraphs VII, VIII, IX and X above were timely because of the fraud of the defendants, Robert J. Carroll and Dorothy Carroll, and that the Statute of Limitations for collection of the assessments for the years 1949

and 1952, which were assessed on October 15, 1957, have been extended by waivers executed by the said defendants on July 2, 1962 (Internal Revenue Form 900) to December 31, 1965.

WHEREFORE, plaintiff, United States of America, prays:

1. That this Court find, determine and adjudge that the defendants, Robert J. Carroll and Dorothy Carroll, are jointly and severally indebted to the United States for the tax claims described in paragraphs VII, VIII, IX, and X above in the sum of \$25,635.45, plus interest as provided by law.

2. That this Court grant to the plaintiff such other and further relief as it may deem just, equitable and proper, including the costs of the action herein.

JOSEPH P. MOY
United States Attorney
Eastern District of New York
225 Washington Street
Brooklyn, New York 11201

By:

Leonard Rothman
Assistant United States Attorney

Michael I. Saltzman
Attorney
Department of Justice
Tax Division
Washington, D. C. 20530

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA,

Plaintiff,

A N S W E R

-against-

65 C 354

ROBERT J. CARROLL and
DOROTHY CARROLL,

Defendants
----- X

Defendants, appearing by their attorney, RICHARD
NADELMAN, answering the complaint herein, allege:

FIRST: Deny each and every allegation contained in
paragraph XI of the complaint herein except admit the
execution of waivers.

SECOND: Deny knowledge or information sufficient to
form a belief as to each and every allegation contained in
paragraphs II, VII, VIII, IX and X of the complaint herein.

AS AND FOR A FIRST SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE TO PLAINTIFF'S ALLEGED
CAUSE OF ACTION:

THIRD: Defendants repeat and reallege each and
every denial contained in paragraphs FIRST and SECOND of
the within answer.

FOURTH: That by reason of the fraud and duress of
plaintiff and its agents, defendants were induced and
compelled to consent to their alleged liability to plaintiff
as set forth in paragraphs VII, VIII, IX and X of the
complaint herein.

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FIFTH: That said fraud and duress consisted of the following:

1. That on or about January 7, 1958 defendant ROBERT J. CARROLL was confined to prison after a conviction on another matter before the United States District Court for the Southern District of New York.

2. That while thus confined said defendant was asked by the United States Attorney for the Eastern District of New York to plead guilty to an information alleging the evasion of certain taxes which, upon information and belief, are the subject of the assessments referred to in paragraphs VIII and IX of the complaint herein.

3. That defendant ROBERT J. CARROLL pleaded guilty thereto solely for the reason that he was advised that his failure to do so would jeopardize opportunity for parole, but said defendant ^{was} otherwise fully prepared to defend himself against the charges contained in the information.

4. That on or about January 19, 1959, after his release from confinement on parole, defendant ROBERT J. CARROLL appeared before the Tax Court of the United States fully prepared to contest validity of the assessments which, upon information and belief, are the subject of paragraphs VII and X of the complaint herein.

5. That at the request of the Court, said defendant relinquished his right to contest the said assessments, as said defendant feared that his failure to cooperate as requested by the court would cause his parole to be revoked.

6. That thereafter, upon the representations of certain Revenue Officers and Agents, defendant ROBERT J. CARROLL consented in writing to the said assessments after being assured by said agents that an offer in compromise would be considered. Defendants subsequently submitted an offer in compromise which was never accepted by the Internal Revenue Service.

7. That solely by reason of the aforesaid fraudulent representations made by said agents of the Internal Revenue Service, which defendants believed in good faith to be true, did defendants consent to the aforesaid assessments, and solely by reason of the aforesaid duress did defendant ROBERT J. CARROLL cooperate with the United States Attorney in the Tax Court of the United States by withdrawing his defense against the assessments.

SIXTH: That the waivers referred to in paragraph XI of the complaint herein were executed by defendants solely to induce the Internal Revenue Service to give consideration to another offer in compromise, which offer was submitted and subsequently rejected.

SEVENTH: That by reason of the fraud and duress referred to hereinabove, none of the acts of apparent consent to any of the assessments herein by the defendants is of any force or effect whatsoever.

AS AND FOR A SECOND SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE TO PLAINTIFF'S ALLEGED
CAUSE OF ACTION:

EIGHTH: Defendants repeat and reallege each and every allegation contained in paragraphs FIRST through SEVENTH of the within answer, as if the same were fully set forth herein.

NINTH: That the assessments referred to in the complaint herein were not made within the time prescribed by statute, and by reason thereof are illegal, void and of no force and effect.

TENTH: That the waivers allegedly signed by the defendants did not extend the statute of limitations as the same had expired for the making of said assessments prior to the time of the alleged execution of said waivers.

ELEVENTH: That by reason of the invalidity of the alleged assessments, the same cannot be reduced to judgment as requested in the complaint herein.

WHEREFORE, Defendants, ROBERT J. CARROLL and DOROTHY CARROLL pray that this Court dismiss the complaint of the plaintiff herein, and grant to the defendants the costs and disbursements of this action.

RICHARD HADELMAN
Attorney for Defendants
Office & P.O. Address
369 Lexington Avenue
New York, N.Y. 10017

CG:ED:HAM
File #650368

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

NOTE OF ISSUE

- against -

ROBERT J. CARROLL and
DOROTHY CARROLL,

Civil Action

No. 65-C-354

Defendants.

JOSEPH P. HOFF,
United States Attorney,
Eastern District of New York,
225 Washington Street,
Brooklyn, New York 11201,
Telephone: 593-3637.

MICHAEL I. SALTZMAN,
Trial Attorney,
Tax Division,
Department of Justice,
Washington, D. C. 20530,
Telephone: 202 RE 7-2000.
Attorneys for Plaintiff.

RICHARD NATHAN, ESQ.,
Attorney for Defendants,
369 Lexington Avenue,
New York, New York 10017.
Telephone: MO 1-1746

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Action to reduce tax assessments in the amount of \$25,635.46 to judgment.

Issue joined by service of answer of defendants on July 16, 1965.

Notice for Civil Non-Jury Calendar for the January 1966 Term.

Dated: Brooklyn, New York,
December 14th, 1965.

JOSEPH P. NOWY,
United States Attorney,
Eastern District of New York,
Attorney for Plaintiff.

By:

LEONARD ROSENMAN,
Assistant United States Attorney.

By:

CHARLES A. GILSON.

A 18

STATEMENT OF READINESS (Dated December 14, 1965)

CC:DR:MAM
File #650368

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

Plaintiff,

STATEMENT OF
READINESS

- against -

ROBERT J. CARROLL and
DOROTHY CARROLL,

Civil Action

Defendants.

No. 65-C-354

-----X

Plaintiff respectfully states as follows:

1. That issue was actually joined on July 16, 1965, by service of defendants' answer.
2. That defendants have had reasonable opportunity to examine plaintiff, and plaintiff has completed all such examinations and discovery proceedings as it desires.
3. That the case is in all respects ready for trial.
4. That settlement of this case has been discussed unsuccessfully by the respective parties.

Dated: Brooklyn, New York,
December 14th, 1965.

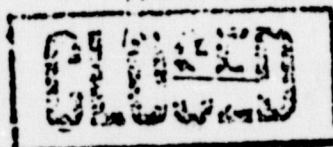
JOSEPH P. MOET,
United States Attorney,
Eastern District of New York,
Attorney for Plaintiff.

By:

BERNARD ROTHEMAN,
Assistant United States Attorney.

By:

CHARLES A. SIMMONS,
Trial Attorney, Tax Division,
Department of Justice.



FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT, E.D. N.Y.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DEC 21 1967

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT J. CARROLL and
DOROTHY CARROLL,

Defendants.

TIME A.M. _____
P.M. 1

JUDGMENT
BY CONSENT

Civil Action
No. 65-C-354

NJ-1527

Whereas it has been stipulated and consented to between counsel for plaintiff and counsel for defendants, ROBERT J. and DOROTHY CARROLL, that a judgment be entered in the amount of \$23,965.36, plus interest, as set forth in paragraphs "VII", "VIII", "IX" and "X" of the complaint *as amended*, it is hereby

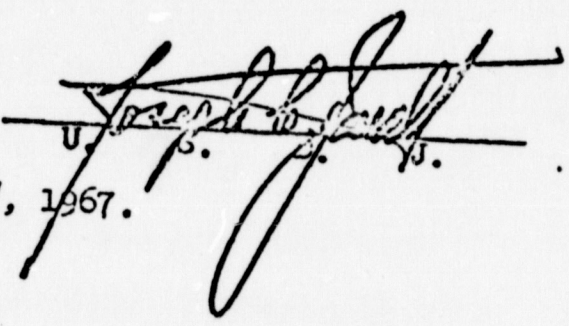
ORDERED, ADJUDGED AND DECREED that the plaintiff, UNITED STATES OF AMERICA, have and recover from the defendants, ROBERT J. and DOROTHY CARROLL, for the taxes described as follows:

	<u>Taxes</u>	<u>Civil Penalties</u>	<u>Assessed Interest</u>	<u>Total Outstanding</u>
1949	\$3,354.12	\$2,341.06	\$1,526.12	\$ 7,181.30
1950	2,568.72	1,809.72	1,238.89	5,577.33
1951	4,049.48	2,742.81	1,710.10	8,484.15
1952	1,387.16	992.65	381.47	2,722.58
				<u>\$23,965.36*</u>

*plus interest thereon as provided by law.

A 20

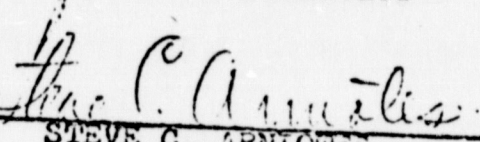
ORDERED, ADJUDGED AND DECREED that the plaintiff,
UNITED STATES OF AMERICA, have and recover costs as taxed
by the Clerk of the Court.

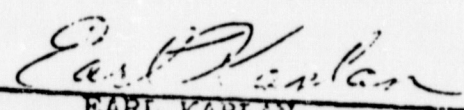

U.S.

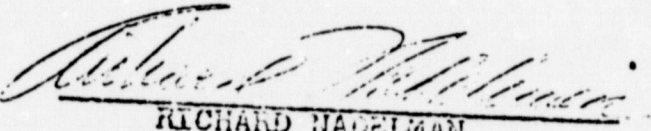
Judgment entered December 21, 1967.

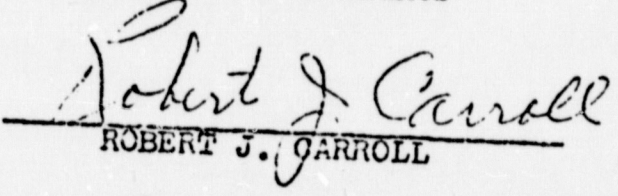
We consent to the form and substance of this
judgment.

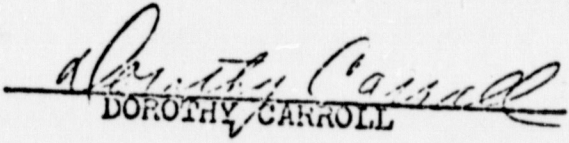
JOSEPH P. HOEY
United States Attorney
Eastern District of New York
Attorney for Plaintiff

By 
STEVE C. ARNIOTES
Assistant U.S. Attorney


EARL KAPLAN
Tax Division
Department of Justice


RICHARD NADELMAN
Attorney for Defendants


ROBERT J. CARROLL


DOROTHY CARROLL

ORDER TO SHOW CAUSE AND AFFIDAVIT WITH EXHIBITS

(Dated November 5, 1973)

A 21

In the United States District Court
For the Eastern District of New York
held at 225 Cadman Plaza East
Borough of Brooklyn, City of New York
on the day of November, 1973.

Present: Honorable

Mark A. Costantino Judge

Courtroom #1

United States of America

Index No. 65-C-354

Plaintiff

Order to Show Cause

Judgment Creditor

Vs.

Robert J. Carroll and

Defendants

Dorothy Carroll

Judgment Debtors

Upon the annexed affidavit of Robert J. Carroll sworn to the
5 day of November, 1973, and upon all the proceedings heretofore had
herein it is

Ordered that the plaintiff, The United States of America, show cause
before this court at a hearing thereof to be held at 225 Cadman Plaza East,
Borough of Brooklyn, City of New York on the 7th day of November, 1973 at
9:30 A.M. or as soon thereafter as the defendant can be heard, why an order
should not be entered herein vacating and setting aside the judgment entered
against Robert J. Carroll and Dorothy Carroll, the defendants and in favor

of the United States of America, the plaintiff, by consent on the 21st day of December, 1967, and why Robert J. Carroll and Dorothy Carroll, the defendants, should not be allowed to defend this action pursuant to the applicable provisions of the United States Code, and why Robert J. Carroll and Dorothy Carroll, the defendants, should not have such other and further relief as may be just, proper and equitable, and let all proceedings on the part of the plaintiff, and the United States Marshal to collect the judgment entered on the 21st day of December, 1967, be and hereby are stayed pending the determination of this motion.

Sufficient reason appearing therefor, let service of a copy of this order together with the papers upon which it was granted, upon the United States Attorney on or before the 7th day of November, 1973, be deemed sufficient.

ENTER

SO ORDERED:
BROOKLYN, NEW YORK
NOVEMBER — 1973

MARK A. CONSTANTINE
United States District Judge

United States District Court
Eastern District of New York

A 23

United States of America

Index No 65-C-354

Plaintiff

VS

Affidavit in support
of motion to vacate
judgment

Robert J. Carroll and

Dorothy Carroll

Defendants

State of New York

County of Kings

Robert J. Carroll, being duly sworn, deposes and says:

I am one of the defendants in this action and make this affidavit in support of my motion to vacate the judgment heretofore entered on December 21, 1967.

That I reside at 3111 Aurelia Court Brooklyn, New York - 11210, County of Kings.

This trial began before Judge Zavatt on December 19, 1967 and continued to December 21, 1967 at which time Judge Zavatt made a suggestion to both sides that an effort be made to settle this matter. In view of the fact that the matter of my taxes had been the subject of investigation since 1951, some sixteen years from it's inception, I was anxious to follow through with Judge Zavatt's suggestion. My wife and I then had a meeting in the office of the Assistant United States Attorney, whose name I do not recall, who was handling the case for the Government. Also at this meeting was Mr. Hyman Boller and Mr. Jonas Gutchin Special Agents of the Internal Revenue Service who were the principal witnesses for the Government. Mr. Boller was the

Agent who began this investigation in 1951 as a result of a newspaper article he read about a company with which I was connected.

Both Mr. Boller and Mr. Gutchin were well aware of my financial condition during our discussion. They were also fully cognizant of my position concerning the Government's claim as being a spurious one and the assessment completely arbitrary. As a matter of fact when an Information was filed against me in connection with this tax matter Mr. Boller told me that there were only a few days left before the Statute of Limitations would preclude any further action by the Government. In my discussion with Mr. Boller at that time, I believe in 1957 I got the distinct impression from Mr. Boller's remarks that the tax action was instituted because of another matter for which I was being prosecuted in the United States Southern District Court and if the Government lost that action there would still be the tax matter. He almost seemed apologetic in the service of the "Information" and said he was "sorry to do it, but his hand was forced" by some superior.

However, I was still anxious to reach a final conclusion as suggested by Judge Zavatt and asked what the Government would consider a fair settlement. Mr. Boller Mr. Gutchin and I believe the Assistant United States Attorney told me that the best way to arrange a settlement was through an "Offer in Compromise" and an "Offer in Compromise" could only be made if the amount assessed was agreed to. I saw nothing unusual in this as I had made several "Offers in Compromise" prior to this court action. I agreed to the assessment as I had several times over the past sixteen years. Accordingly a Consent Judgment was entered against me and my wife on December 21, 1967.

In the early part of January 1968 I visited the office of Mr. Stuart Goldberg Assistant United States Attorney, Fines and Claims Section in an

effort to determine what would be a fair offer in settlement of the agreed to assessment. Mr. Goldberg told me he would have to make a check of my financial condition before he could discuss any settlement and said he would ask the Federal Bureau of Investigation and the Internal Revenue Service to make this check. I visited Mr. Goldberg six or seven times from early January 1968 to late February 1968 discussing this situation and trying to come up with a figure he felt would be acceptable. In late February he told me that he received the reports about my finances and it appeared that I had no means with which to pay. During our many conversations I told him I could borrow some money from my family. He suggested that if I could pay two (\$2,000.00) thousand dollars he believed he could recommend it's acceptance in full settlement. I returned several days later and explained to him that I discussed the matter with my family and all I could raise was twelve hundred (\$1,200.00) dollars. After much discussion he said he thought it might be acceptable as I was making monthly payments to the United States Government on a fine in another matter.

On February 26, 1968 I sent a certified check in the amount of twelve hundred (\$1,200.00) dollars and a covering letter explaining my situation. I further requested that I be permitted to appear personally before the hearing board in Washington, D.C. in order to explain to them in person what I felt they should know.

About three months after sending my "Offer in Compromise" I called Mr. Goldberg to learn if he had heard from Washington. He said he had not heard but would contact me as soon as he knew something. I spoke to Mr. Goldberg several times thereafter and he told me to be patient, that these things take time. On or about February 17, 1969 almost one year after my "Offer" I visited the Office of the United States Attorney to see Mr.

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Goldberg. I was told that Mr. Goldberg no longer worked there and that a Mr. Louis Rosenthal had taken his place. I visited Mr. Rosenthal's office and explained my situation to him, asking if he knew the status of my case. He obtained my file and began to review it. When I questioned him about any word from Washington, D.C. he seemed somewhat uncomfortable. To my utter shock and amazement he finally told me that my "Offer" and certified check was never sent to Washington, D.C. I could not believe what I heard and saw. I had some further discussion with Mr. Rosenthal explaining that I believed the Government acted in good faith when Judge Zavatt suggested we reach a settlement. But after what I just learned I felt betrayed. During my conversation with him he inadvertently told me that Mr. Goldberg was now working with the Securities and Exchange Commission in their New York Office. As I was leaving Mr. Rosenthal's office he asked me not to tell Mr. Goldberg that he told me where he was working. I immediately went to the offices of the Securities Exchange Commission where I saw Mr. Goldberg. I confronted him with the information I just learned and asked him to explain why he had failed to act on my "Offer", especially after our many conversations and his suggestion of the amount to be offered and the accompanying letter. His answer to me was that he did not recall the case and did not know me, which was a lie. What Mr. Goldberg did I believe was illegal, certainly he was guilty of malfeasance. A day or two after I visited Mr. Rosenthal's office

I received a certified letter from him dated February 17, 1969 which read as follows

"Dear Mr. & Mrs. Carroll:

After careful consideration your offer to compromise the above claim is hereby rejected.

Accordingly, your check in the amount of \$1,200.00 is returned herewith."

How could he have given the matter careful consideration and reject it on the very day he learned of it through me. It was obviously a cover-up of the wrong doing of his predecessor.

Thereafter I visited the Fines and Claims section of the United States Attorney's Office on many occasions, having discussions with several Assistant United States Attorneys, among them Mr. Illmensee and Mr. Dertinger, in an effort to resolve this matter. On October 18, 1971 I made an offer of \$2,000.00 and forwarded a certified check to Mr. Thomas A. Illmensee, Assistant United States Attorney, Fines and Claims Section. This offer was made after discussing my financial condition with Mr. Illmensee and the circumstances of the trial before Judge Zavatt. He indicated to me that it would be acceptable. He suggested I write a covering letter explaining the fact that I have other judgments filed against me in excess of \$100,000.00. I did this in my covering letter of October 18, 1971. I again asked that I be permitted to appear in Washington, D.C. when my "offer" was being considered. I never got the opportunity to appear personally.

On January 24, 1973 I visited the office of Mr. Rosenzweig, Chief of Fines and Claims Section, United States Attorney. I asked Mr. Rosenzweig the status of my offer and he handed me the original check I sent with my offer. Apparently this check, too, was never sent to Washington, D.C. I

asked him why my "Offers" were rejected without explanation he became abusive and said that the Government did not have to explain anything to me. I remonstrated with him stating that I believed the Government deceived me and never intended to make a settlement as suggested by Judge Zavatt. Mr. Rosenzweig then turned on me and said, "Mr. Carroll, do you know what a stand committed fine means." I told him I knew what it meant and his threats merely served to prove what I finally believed was the Government's intention in regards to a settlement of my case.

On February 13, 1973 I received a letter from the United States Attorney, copies of which are annexed hereto, in which the Government demands the full amount of the judgment, in direct violation of the suggestion of Judge Zavatt.

On August 15, 1973 I was ordered to the office of Mr. I. Bradford Spielman, Assistant United States Attorney, Fines and Claims Section, for the purpose of giving a financial statement under oath. I told Mr. Spielman that I would refuse to give any further statements as the United States Marshal had threatened to serve my wife's employer with an income execution which meant her salary would be garnisheed. I told Mr. Spielman that for reasons stated in this affidavit I was planning to make a motion to vacate this judgment. He told me that if I gave him a statement under oath he would instruct the United States Marshal to take no action for a period of ninety (90) days, pending the filing of this motion. I agreed, and gave him the statement under oath. However, because of my suspicions of the actions of the Government in the past I asked Mr. Spielman to reduce his agreement with me in writing before signing the statement. This he did and the record will show it.

On August 17th 1973, Mr. Spielman signed an income execution order which was served on my wife's employer immediately thereafter by the United States Marshall despite the fact that I had a written agreement with the United States Attorney that no such action would be taken for a period of ninety days.

I called Mr. Spielman to find the reason for the order and his explanation was entirely unsatisfactory to me. I told him I expected the office of the United States Attorney to honor their commitment to me. I would not have given this statement under oath if I believed yet another deception was being perpetrated against me. I told Mr. Spielman I wanted to see him at his office to confront him and if he did not rescind the order for the income execution I demanded the return of the statement I gave him under oath. He told me not to visit his office as he would not see me and insisted that he would not rescind the order.

The following day I visited the office of the Fines and Claims Section of the United States Attorney and asked to see Mr. Spielman, needless to say he was not available to me. I then asked to see the Chief of Fines and Claims Miss Mary P. Maguire. I was told she could not or would not see me. I told the clerk I would not leave the office until I got a reasonable explanation of this perfidious action. After about one hour Miss Maguire consented to see me. She knew about my complaint and agreed to give me only 60 days to file this motion. She also agreed to rescind the order of the income execution. Copy of the rescission is annexed hereto.

This matter is now over twenty one years old and no reasonable settlement appears imminent by virtue of the Government's apparent desire to punish me. Under no condition would I have agreed to sign a Consent Judgment if I suspected in the slightest degree that the Government would resort to the many deceptions it practised on me.

No previous application for the relief sought herein has been made.

Wherefore, it is respectfully prayed that the judgment entered on December 21, 1967 be vacated and declared legally void, and that any further proceedings on behalf of the plaintiff be stayed pending the determination of the issues herein, and that the court may render such other, further and different relief as appears just and proper herein.

Sworn to before me this

5 day of November, 1973

Robert J. Carroll

HENRY MIDAS, JUDGE
 County of New York, State of New York
 City of New York, N.Y.
 Commission Expires June 1, 1973

Hy Midas Judge

JDP:JR:aj
#650268

February 13, 1973

Mr. Robert J. Carroll
3111 Aurelia Court
Brooklyn, New York 11210

Re: U.S. v. Robert J. Carroll and Dorothy
Carroll

Dear Sir:

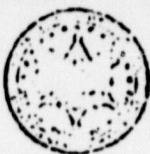
Please be advised that we have been informed by the Department of Justice that they would consider acceptable a cash offer of \$10,000.00 and a collateral agreement.

If this is acceptable to you, please forward to us a certified check in that amount, made payable to the "treasurer of the United States", plus the collateral agreement.

Very truly yours,

ROBERT A. MORSE
United States Attorney

By
Ralph Mahon
Legal Assistant



United States Department of Justice

A

32

UNITED STATES MARSHALS SERVICE

EASTERN DISTRICT OF NEW YORK

UNITED STATES COURTHOUSE

225 CADMAN PLAZA EAST

BROOKLYN, NEW YORK 11201

September 7, 1973

Child Guidance Toys, Inc.
1055 Bronx River Avenue
Bronx, New York
ATTN: Payroll Department

Dear Sir:

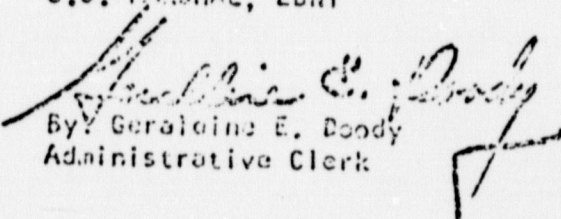
Pursuant to telephone conversation of this date, please do not collect any monies for the Income Execution against Dorothy Carroll of your firm.

It is requested that this income execution be held in abeyance and no collections be made until further notice is received from this office.

Thank you for your cooperation in this matter.

Sincerely yours,

BENJAMIN F. BUTLER
U.S. MARSHAL, EDNY


By: Geraldine E. Doody
Administrative Clerk

AFFIDAVIT OF I. BRADFORD SPIELMAN WITH EXHIBITS

(Dated November 16, 1973)

A 33

JP:IES:BJ
#650368

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

Plaintiff,

AFFIDAVIT

65 C 354

V.

ROBERT J. CARROLL and
DOROTHY CARROLL,

Defendants.

-----X

I. Bradford Spielman, being duly sworn, deposes
and says:

1. That I am an Assistant United States Attorney,
duly appointed and serving on the staff of ROBERT A. MORSE,
United States Attorney for the Eastern District of New
York, and I am fully familiar with all of the facts and
proceedings heretofore had herein.

2. That a summons and complaint was issued and
duly served on May 1, 1965 upon Robert J. Carroll and
Dorothy Carroll, the defendant-judgment debtors herein, to
reduce to judgment assessments for certain income taxes,
fraud penalties, and interest as provided by law. Both
defendants were represented by Richard Nadelman, Esq. from
the commencement of the action to entry of a consent judg-
ment on December 21, 1967. (See Exhibit "A" attached
hereto.)

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3. On December 21, 1967 a judgment by consent was entered in the amount of \$23,965.36 which was signed by both defendants and their attorney Richard Nadelman, Esq.

U.S. Atty Gen
Civil Division

4. Since the entry of the judgment, the defendants have promised to make monthly payments, but none has been received since July 15, 1969. The current balance due on this judgment is \$23,825.36, plus interest. The defendants made several settlement offers which were rejected for insufficiency.

5. The defendant Robert J. Carroll's affidavit, sworn to the 5th day of November, 1973, gives a summary of his case, but states no legal grounds for vacating the consent judgment. The defendants' motion to vacate the judgment should be deemed a motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure and must be denied since it is not timely and is barred by the statute.

Serzysko v. Chase Manhattan Bank, 461 F 2d 699 (2d Cir. 1972). Rule 60(b) requires the motion to be made within a reasonable time, and if the motion is based on the grounds set forth in subsections (1), (2) or (3) of Rule 60(b) it must be made not more than one year after the judgment was entered. The consent judgment was entered December 21, 1967 and the instant motion was commenced on November 5, 1973. This motion was made almost 6 years after the entry of the consent judgment. If the judgment-debtors seek to vacate the consent judgment for any of the grounds stated in Rule 60(b) (1), (2), or (3), the motion is barred because

it was not brought within the one year period prescribed by the statute. The judgment debtors state no grounds for vacating the judgment pursuant to Rule 50(b) (4), (5), or (6).

6. Basically, the judgment debtors appear to be complaining that the United States has refused to accept their offers to compromise the judgment. Such argument fails to recognize the fact that the judgment was entered with the full knowledge and consent of both defendants, who were represented throughout the action by counsel. Nor is the United States under any obligation to accept any offer to compromise the judgment.

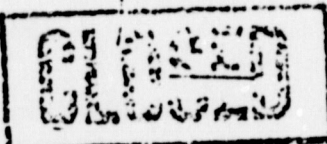
WHEREFORE, it is respectfully prayed that the defendants' motion be denied and the stay on the proceedings on behalf of the plaintiff and United States Marshal be vacated and for such other and further relief as this Court deems just and proper.

AS/

I. Bradford Spielman
Assistant U.S. Attorney

Sworn to before me this
16th day of *November*, 1973

STELLA B. MAGIER
Notary Public, State of New York
No. 246501984
Qualified in Kings County
Commission Expires March 20, 1976



FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT, E.D. N.Y.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DEC 21 1967

UNITED STATES OF AMERICA,

TIME A.M. _____
P.M. 1 _____

Plaintiff,

JUDGMENT
BY CONSENT

v.

ROBERT J. CARROLL and
DOROTHY CARROLL,

Civil Action
No. 65-C-354

Defendants.

NJ-1527

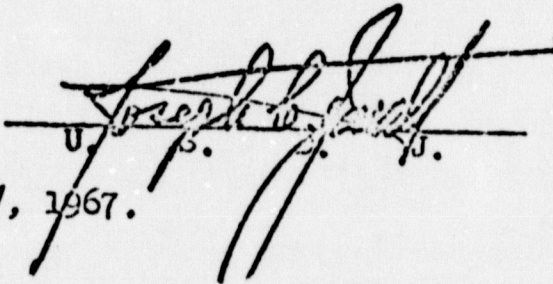
Whereas it has been stipulated and consented to between counsel for plaintiff and counsel for defendants, ROBERT J. and DOROTHY CARROLL, that a judgment be entered in the amount of \$23,965.36, plus interest, as set forth in paragraphs "VII", "VIII", "IX" and "X" of the complaint *as amended* it is hereby

ORDERED, ADJUDGED AND DECREED that the plaintiff, UNITED STATES OF AMERICA, have and recover from the defendants, ROBERT J. and DOROTHY CARROLL, for the taxes described as follows:

	<u>Taxes</u>	<u>Civil Penalties</u>	<u>Assessed Interest</u>	<u>Total Outstanding</u>
1949	\$3,354.12	\$2,341.06	\$1,526.12	\$ 7,181.30
1950	2,568.72	1,809.72	1,238.89	5,577.33
1951	4,049.48	2,742.81	1,710.10	8,484.15
1952	1,387.16	992.65	381.47	2,722.58
				<u>\$23,965.36*</u>

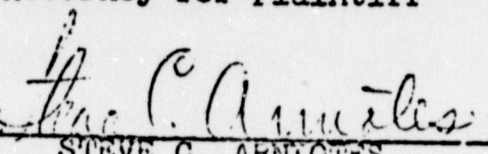
*plus interest thereon as provided by law.

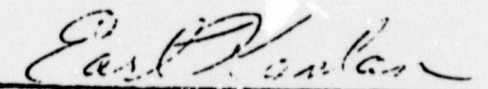
ORDERED, ADJUDGED AND DECREED that the plaintiff,
UNITED STATES OF AMERICA, have and recover costs as taxed
by the Clerk of the Court.

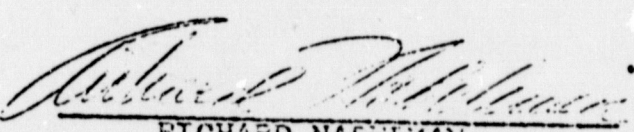

Judgment entered *December 21*, 1967.

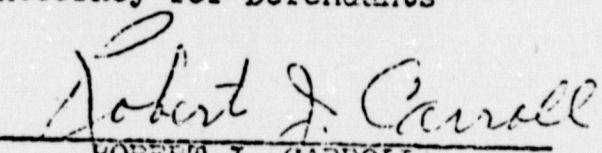
We consent to the form and substance of this
judgment.

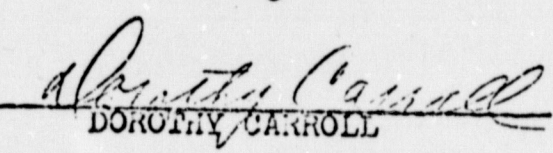
JOSEPH P. HOEY
United States Attorney
Eastern District of New York
Attorney for Plaintiff

By 
STEVE C. ARNIOTES
Assistant U.S. Attorney


EARL KAPLAN
Tax Division
Department of Justice


RICHARD NADELMAN
Attorney for Defendants


ROBERT J. CARROLL


DOROTHY CARROLL

REPLY AFFIDAVIT OF ROBERT J. CARROLL

(Dated November 26, 1973)

A 38

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

Plaintiff,

VS.

ROBERT J. CARROLL and
DOROTHY CARROLL,

Defendants.

-----X

AFFIDAVIT

65 - C - 354

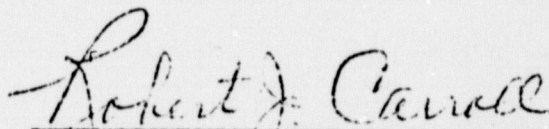
Robert J. Carroll, being duly sworn, deposes and says:

1. This affidavit is made in answer to the Government's affidavit of November 16, 1973.
2. The motion to vacate the consent Judgment was filed November 7th 1973 pursuant to Rule 60 (D) subsections 3 and 6 of the Federal Rules of Civil Procedure.
3. The Government's contention that the motion to vacate is barred because it is not timely is improper because they failed to act for over one (1) year on the original offer of a settlement as suggested by Judge Zavatt. As a matter of fact the Government never made any effort to comply with the order of Judge Zavatt to effect a settlement until February 13, 1973 at which time they demanded the full amount of the judgment in direct violation of the Judge's order. Accordingly, the motion to vacate is timely if the date of the Government's first effort to comply with the order of the Court is February 13, 1973.

4. The last sentence of paragraph 6 of the Government's affidavit states "Nor is the United States under any obligation to accept any offer to compromise the judgment". This statement among others is further proof that the Government never intended to act in good faith in connection with a settlement as suggested and ordered by Judge Zavatt.

Had I known what the Government's attitude would have been I would never have agreed to sign a Consent Judgment, but would have continued the case and let the matter be adjudicated on its merits.

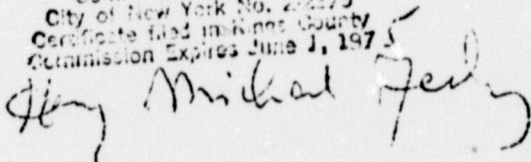
5. On November 9, 1973, the date set by the Court for a hearing on my motion to vacate, I appeared with the Government before Judge Mark A. Costantino. The Government offered no argument against the motion. Mr. Spielman the Assistant United States Attorney appearing for the Government stated to the Court that he would submit a memorandum of Law covering the Motion. I had no opportunity to argue the merits of my case. Accordingly, I respectfully request an oral hearing in an effort to rebut the Government's contention in their affidavit.


Robert J. Carroll

Sworn to before me this

26 day of November, 1973

HENRY MICHAEL FEDER
Commissioner of District
City of New York No. 22275
Certificate filed in Kings County
Commission Expires June 1, 1975



MEMORANDUM AND ORDER OF THE DISTRICT COURT

(Dated January 3, 1974)

A 41

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA :

v. :

65-C-354

ROBERT J. CARROLL and
DOROTHY CARROLL

: MEMORANDUM and ORDER

-----x
JAN 3 - 1974

A p p e a r a n c e s :

Bradford Spielman, Assistant United States Attorney, E.D.N.Y.
for the United States

Robert J. Carroll and Dorothy Carroll, pro se

COSTANTINO, D.J.

Defendants have moved for an order vacating and setting aside a consent judgment entered into on December 21, 1967 between them and the United States. The United States opposes the motion on the ground that the period of time within which a motion for relief from judgment can be granted, pursuant to Federal Rule of Civil Procedure 60(b), has long since expired.

The judgment entered into here arose as the result of an assessment for income taxes due to the Internal Revenue Service. The amount agreed upon was \$23,965.36. According

to the defendants no attempt was made to execute on the judgment until February 13, 1973. In the interim defendants allege that they made several attempts to settle the matter for lesser amounts and that through their own investigation they discovered that their offers were never sent to the appropriate authorities for acceptance. The government alleges that the defendants agreed to make monthly payments but none has been received since July 15, 1969.

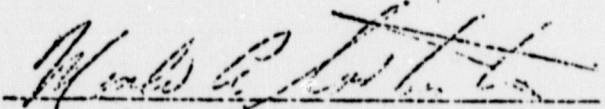
Defendants have specified that their Rule 60(b) motion is based upon either reason (3) (fraud, misrepresentation, or other misconduct of an adverse party), or (6) (any other reason justifying relief from the operation of the judgment). Federal Rule 60(b) says that motions under reasons (1) through (3) must be made not more than one year after the judgment has been entered into. Serzysko v. Chase Manhattan Bank, 460 F.2d 699 (2d Cir. 1972), cert. denied 409 U.S. 893, reh. denied 409 U.S. 1029 (1972). Accordingly, reason (3) is untimely.

The court has the power to grant equitable relief from final judgments pursuant to Rule 60(b) (6), but several conditions must exist before a court can use this power. First, the party seeking relief must do so within a reason-

able period of time. Second, the motion must be based on something other than one of the first five reasons in Rule 60. Finally, the relief must be justified. Sarzysko v. Chase Manhattan Bank, supra; 7 Moore's Federal Practice ¶ 60.27[1] (2d ed. 1970); United States v. Erdoss, 440 F.2d 1221, 1223 (2d Cir. 1971), cert. denied, Horvath v. United States, 404 U.S. 849 (1971).

Here the motion was made November 5, 1973, almost six years after the signing of the consent decree and the defendants are complaining of the government's misconduct in not accepting their offers of settlement. The relief request is not justified because the time lapse was unreasonable and the motion is in reality based on a Rule 60(b)(3) reason.

Accordingly, defendants' motion to vacate and set aside the consent decree is denied.


U. S. D. J.

TITLE OF CASE		ATTORNEYS
ROBERT J. CARROLL and DOROTHY CARROLL		For Plaintiff:
VS		RICHARD MADEIRA, JR.
INTERNAL REVENUE SERVICE, THOMAS E. SCANLON District Director of Internal Revenue for Brooklyn, New York and JONAS GUNTHER, Revenue Officer		369 Lexington Ave. NO 1-1746
		For Defendant:
BASIS OF ACTION:		TO COMPEL THE DEFENDANTS TO ACCEPT AN OFFER IN COMPROMISE MADE BY THE PLAINTIFFS HEREIN AND TO ENJOIN THE DEFENDANTS FROM THE SEIZURE OF WAGES OWED TO PLAINTIFF
JURY TRIAL CLAIMED		DOROTHY CARROLL, ETC.
ON		

[illegible]

ABSTRACT OF COSTS		RECEIPTS, REMARKS, ETC.
TO WHOM DUE	AMOUNT	

ONLY COPY AVAILABLE

MEMORANDUM AND ORDER OF THE DISTRICT COURT (Dooling, J.)
IN 64-C-287 (E.D.N.Y.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT J. CARROLL and
DOROTHY CARROLL,

Plaintiffs,

-against-

INTERNAL REVENUE SERVICE, THOMAS
E. SCANLON, District Director of
Internal Revenue for Brooklyn,
New York, and JONAS GUTCHIN,
Revenue Officer,

Defendants.

64 C 287

MEMORANDUM
and
ORDER

Appearances:

CHARLES SIMMONS, Esq. (JOSEPH P. HOEY,
Esq., United States Attorney,
BERNARD ROTHMAN, Esq., Assistant
United States Attorney, LOUIS B.
OBERDORFER, Esq., Assistant Attorney
General, FRED B. UGAST, Esq., ARNOLD
MILLER, Esq., Attorneys, Department of
Justice, Of Counsel) for the motion.

RICHARD NADELMAN, Esq., Attorney for
plaintiffs, opposed.

DOOLING, D. J.

Plaintiffs owe United States Income Taxes for the years
1949 through 1952 in the amount of \$23,098.46. They seek to
compel the Government to accept an offer in compromise of
\$500 and to enjoin the Government from levying on the wages

2.

of the plaintiff wife. Plaintiffs join the District Director and a Revenue officer as the defendants against whom the decree sought is to run. The defendants move to dismiss the complaint as insufficient and as seeking relief the grant of which is forbidden by 28 U. S. C. §2201/^{and} Internal Revenue Code §7421.

The motion must be granted.

1. Section 7122 of the Internal Revenue Code of 1954 authorizes the Secretary or his delegate to compromise tax cases. The Regulations recognize two alternative grounds for such compromises: doubt as to liability or doubt as to collectibility. 26 C. F. R. §301.7122 - 1(a). Section 301.7122-1 7122, the Regulations, 26 C. F. R. §§301.7122/and the Procedural Rules 26 C. F. R. §601.203 provide the exclusive route to compromise of a tax case. Botany Worsted Mills v. United States, 1929, 278 U. S. 282; Yarborough v. United States, 4th Cir. 1956, 230 F. 2d 56; Moskowitz v. United States, Court of Claims, 1961, 285 F. 2d. 451;

The decision to accept or reject a compromise offer by its nature involves the discretion of administrative authority and can not be compelled by any action for a mandatory injunction.

3.

2. Enochs v. Williams Packing and Navigation Co., 1962, 370 U. S. 1 makes it clear that in almost no circumstances can the collection of a tax admittedly due be enjoined in the teeth of Internal Revenue Code §7421. Only the Congress, not the Courts, can establish exemptions for wage payments.

3. The suggestion that there has been an acceptance here by retention of the \$500 sum tendered with the offer in compromise is quite invalid. The strict administrative safeguards thrown about the compromise power would not be avoided by the retention of a check - if the facts were susceptible of the interpretation that the Government did so.

4. Defendants' motion being one to dismiss under Rule 12(b)(6), it may be assumed as true that defendants did not grant plaintiffs a hearing before the Appellate Division of the region as required under 26 C. F. R. §601.203(d) after submission of a written request following rejection of an offer in compromise (See Compl. par. 15). Nagler v. Admiral Corp. 2nd Cir. 1957, 248 F. 2d. 319; Cochran v. Channing Corp., S.D.N.Y. 1962, 211 F. Supp. 239. Perhaps, in some circumstances, the failure to grant an administrative remedy would

be judicially remediable (Accardi v. Shaughnessy, 1954, 347 U. S. 260) but here that relief is not distinctly sought and it is implicit that it would be futile to go through an additional administrative stage to the same end result.

It was indicated on the argument that the United States still holds uncanceled its \$500 check to the order of the taxpayers. The proper course appears to be for the taxpayers to receive back the check and for them thereupon to endorse it to the husband's sister if she advanced the funds on terms that entitle her to reclaim them specifically now that the occasion of the advance has failed.

It does not appear that plaintiffs wish to amend, or, indeed, could amend successfully.

Accordingly, on defendants' motion, it is

ORDERED that the motion is granted, the complaint is dismissed and the Clerk is directed to enter judgment that the plaintiffs take nothing, that the action be dismissed and that defendants recover of the plaintiffs their costs of the action.

Brooklyn, New York

July 28, 1964.

JOHN F. DOOLING, JR.

U. S. D. J.

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

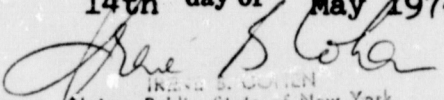
XX DEBORAH AMUNDSEN, being duly sworn, says that on the 14th
day of May 1974, I deposited in Mail Chute Drop for mailing in the
U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and
State of New York, two copies of appendix for the appellee
of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper
directed to the person hereinafter named, at the place and address stated below:

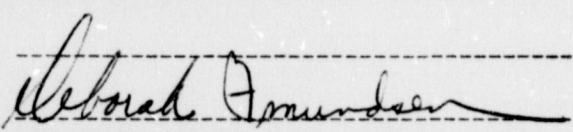
Mr. Robert J. Carroll

3111 Aurelia Court

Brooklyn, New York 11210

Sworn to before me this
14th day of May 1974


IRENE S. COHEN
Notary Public, State of New York
No. 24-0683965
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1975


DEBORAH AMUNDSEN

SIR:

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the U. S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the _____ day of _____, 19____, at 10:30 o'clock in the forenoon.

Dated: Brooklyn, New York,

_____, 19____

United States Attorney,
Attorney for _____

To: _____

Attorney for _____

SIR:

PLEASE TAKE NOTICE that the within is a true copy of _____ duly entered herein on the _____ day of _____, in the office of the Clerk of the U. S. District Court for the Eastern District of New York,

Dated: Brooklyn, New York,

_____, 19____

United States Attorney,
Attorney for _____

To: _____

Attorney for _____

----- Action No.-----

UNITED STATES DISTRICT COURT
Eastern District of New York

-----Against-----

United States Attorney,
Attorney for _____
Office and P. O. Address,
U. S. Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Due service of a copy of the within _____
is hereby admitted.

Dated: _____, 19____

Attorney for _____

RT